

MEMO ENDORSED**GARBARINI FITZGERALD P.C.**

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June 11, 2013

VIA FACSIMILE to (212) 805-7930

Hon. James C. Francis IV, U.S.M.J.
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

USDS SDNY	
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DATE FILED:	6/17/13

Re: Newman v. Elisa Dreier Reporting Corp. et al (12-cv-9271)
Response to Order to Show Cause.

Your Honor:

We represent the Plaintiff in the above matter. We write in response to the Order to Show Cause issued by your Honor on June 10, 2013. See Docket No. 22.

"The court may hold a party in civil contempt for failure to comply with an order if the court's order 'is clear and unambiguous,' proof of the party's failure to comply 'is clear and convincing,' and the party 'has not diligently attempted to comply in a reasonable manner.'" Am Civil Liberties Union v. Dep't of Def., 827 F. Supp. 2d 217, 230 (S.D.N.Y. 2011) (quoting Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc., 369 F.3d 645, 655 (2d Cir.2004)).

On Friday June 7, Defendants' counsel sent to us a draft correspondence to Judge Abrams seeking to delay this action further based on the mediation. In the interest of judicial expedience and to avoid further delay, on Saturday June 8, I sought to inform Judge Abrams of Defendants' failure to adhere to a contingency discussed at the settlement conference and to restore the matter to the Court's schedule. While I had a good faith belief at that time that this was not the type of information to be kept confidential, in retrospect I realize that it was ill-advised and sincerely apologize. I deeply respect Your Honor and this Court and in no way intended to offend or go against either. Respectfully, I request that a contempt order not be entered for my imprudent, but good faith, error.

GARBARINI FITZGERALD P.C.

By: Richard M. Garbarini

Richard M. Garbarini

cc: Matthew S. Hackell (via email to msh@pwlawyers.com)

CERTA BONUM CERTAMEN ♦ FIGHT THE GOOD FIGHT

Garbarini FitzGerald P.C.

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Meredith Cavallaro (via email to mcavallaro@pwlawyers.com)

6/17/13

Counsel's explanation is
accepted, and no further
order shall issue.

so ORDERED.

Jane C. Francis IV
USM J